

**RESOLUTION NO. 2011-615**

Adopted by the Sacramento City Council

November 15, 2011

**AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS WITH THE COUNTY OF SACRAMENTO FOR FISCAL YEAR 2011/12 FUNDING OF JOINT CITY/COUNTY ORGANIZATIONS AND REDUCE THE FISCAL YEAR (FY) 2011/12 OPERATING BUDGETS OF THE SACRAMENTO METROPOLITAN ARTS COMMISSION AND THE SACRAMENTO SPORTS COMMISSION**

**BACKGROUND**

- A. The City of Sacramento and County of Sacramento annually provide joint operating support for the Center for Sacramento History (CSH), the Sacramento Metropolitan Arts Commission (SMAC), the Sacramento History Museum, the Powerhouse Science Center, and the Sacramento Sports Commission.
- B. The County funding is administered by the City and is budgeted in the City's revenue and expense budget.
- C. In June 2011, the County Board of Supervisors approved Transient Occupancy Tax revenue allocations for the joint-funded organizations for FY2011/12.
- D. The approved amounts are in total \$52,155 less than what was budgeted in the City's FY2011/12 Approved Budget.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

Section 1: The City Manager or his designee is authorized to execute the agreements, attached as Exhibits A-E, between the City of Sacramento and the County of Sacramento, accepting the County's share of FY2011/12 funding in the following amounts for these jointly funded programs:

|  |              |
|--|--------------|
| A. Center for Sacramento History           | \$145,350.00 |
| B. Sacramento Metropolitan Arts Commission | \$150,000.00 |
| C. Sacramento History Museum               | \$93,204.50  |
| D. Powerhouse Science Center               | \$93,204.50  |
| E. Sacramento Sports Commission            | \$100,000.00 |

Section 2: The City Manager or his designee(s) is authorized to reduce the revenue and expense budgets for SMAC and the Sacramento Sports Commission:

| Organization                     | Dept ID  | Reduction          |
|----------------------------------|----------|--------------------|
| Sacramento Metro Arts Commission | 17001811 | (22,155.00)        |
| Sacramento Sports Commission     | 80001035 | (30,000.00)        |
| <b>TOTAL</b>                     |          | <b>(52,155.00)</b> |

Section 3: Exhibits A through E are part of this Resolution.

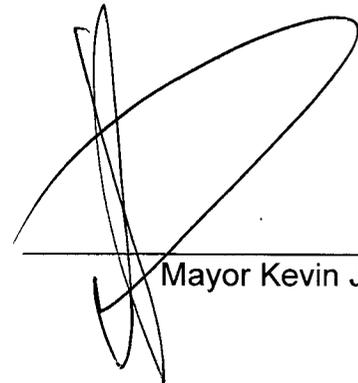
Adopted by the City of Sacramento City Council on November 15, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



\_\_\_\_\_  
Mayor Kevin Johnson

Attest:

  
\_\_\_\_\_  
Shirley Concolino, City Clerk

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**2011-2012 Transient Occupancy Tax  
AGREEMENT**

THIS AGREEMENT is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 2011, by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and City of Sacramento/Center for Sacramento History, a ~~joint powers authority~~, hereinafter referred to as "CONTRACTOR."

KP

**RECITALS**

WHEREAS, pursuant to the provisions of Subdivision K of Section 15 of the Charter of the County of Sacramento, and Section 63000 of the Government Code of the State of California, the Board of Supervisors of COUNTY is desirous to promote economic revitalization, future development, and a healthy climate for jobs in California which will depend upon a well-conceived system of public improvements, services and amenities that are essential to the economic well-being of the citizens of the state and County and are necessary to maintain, as well as create, employment within the state and County; and

WHEREAS, the services to be performed by CONTRACTOR pursuant to this contract will serve to exhibit and/or enhance the economic benefits to Sacramento County and its residents; and

WHEREAS, COUNTY AND CONTRACTOR desire to enter into this Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, COUNTY and CONTRACTOR agree as follows:

**I. SCOPE OF SERVICES**

CONTRACTOR shall provide services in the amount, type and manner described in Exhibit A, which is attached hereto and incorporated herein.

**II. TERM**

This Agreement shall be effective and commence as of the date first written above and shall end on June 30, 2012.

**III. NOTICE**

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

TO COUNTY

County Executive Office  
Attn: Troy Givans  
700 H Street, Suite 7650  
Sacramento, CA 95814-1280

TO CONTRACTOR

City of Sacramento/  
Center for Sacramento History  
1030 15<sup>th</sup> Street, Suite 250  
Sacramento, CA 95814-4025

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

**IV. COMPLIANCE WITH LAWS**

CONTRACTOR shall observe and comply with all applicable Federal, State, and County laws, regulations and ordinances.

**V. GOVERNING LAWS AND JURISDICTION**

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

**VI. LICENSES AND PERMITS**

- A. CONTRACTOR shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Sacramento and all other appropriate governmental agencies, including any certification and credentials required by COUNTY. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by COUNTY.
- B. CONTRACTOR further certifies to COUNTY that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, State or county government contracts. Contractor certifies that it shall not contract with a Subcontractor that is so debarred or suspended.

**VII. PERFORMANCE STANDARDS**

CONTRACTOR shall perform its services under this Agreement in accordance with the industry and/or professional standards applicable to CONTRACTOR'S services.

**VIII. OWNERSHIP OF WORK PRODUCT**

All technical data, evaluations, plans, specifications, reports, documents, or other work products developed by CONTRACTOR hereunder shall be the exclusive property of COUNTY and shall be delivered to COUNTY upon completion of the services authorized hereunder. CONTRACTOR may retain copies thereof for its files and internal use. Publication of the information directly derived from work performed or data obtained in connection with services rendered under this Agreement must first be approved in writing by COUNTY. COUNTY recognizes that all technical data,

evaluations, plans, specifications, reports, and other work products are instruments of CONTRACTOR's services and are not designed for use other than what is intended by this Agreement.

**IX. STATUS OF CONTRACTOR**

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is independent and that no relationship of employer-employee exists between the parties hereto. CONTRACTOR's assigned personnel shall not be entitled to any benefits payable to employees of COUNTY. COUNTY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this agreement; and as an independent contractor, CONTRACTOR hereby indemnifies and holds COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by any third party that an employer-employee relationship exists by reason of this agreement.
- B. It is further understood and agreed by the parties hereto that CONTRACTOR in the performance of its obligation hereunder is subject to the control or direction of COUNTY as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by CONTRACTOR for accomplishing the results.
- C. If, in the performance of this agreement, any third persons are employed by CONTRACTOR, such person shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR, and the COUNTY shall have no right or authority over such persons or the terms of such employment.
- D. It is further understood and agreed that as an independent contractor and not an employee of COUNTY, neither the CONTRACTOR nor CONTRACTOR's assigned personnel shall have any entitlement as a County employee, right to act on behalf of COUNTY in any capacity whatsoever as agent, nor to bind COUNTY to any obligation whatsoever. CONTRACTOR shall not be covered by worker's compensation; nor shall CONTRACTOR be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the COUNTY to employees of the COUNTY.
- E. It is further understood and agreed that CONTRACTOR must issue W-2 and 941 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel under the terms and conditions of this agreement.

**X. CONTRACTOR IDENTIFICATION**

CONTRACTOR shall provide the COUNTY with the following information for the purpose of compliance with California Unemployment Insurance Code section 1088.8 and Sacramento County Code Chapter 2.160: CONTRACTOR's name, address, telephone number, social security number, and whether dependent health insurance coverage is available to CONTRACTOR.

**XI. BENEFITS WAIVER**

If CONTRACTOR is unincorporated, CONTRACTOR acknowledges and agrees that CONTRACTOR is not entitled to receive the following benefits and/or compensation from COUNTY: medical, dental, vision and retirement benefits, life and disability insurance, sick leave, bereavement leave, jury duty leave, parental leave, or any other similar benefits or compensation otherwise provided to permanent civil service employees pursuant to the County Charter, the County Code, the Civil Service Rule, the Sacramento County Employees' Retirement System and/or any and all memoranda of understanding between COUNTY and its employee organizations. Should CONTRACTOR or any employee or agent of CONTRACTOR seek to obtain such benefits from COUNTY, CONTRACTOR agrees to indemnify and hold harmless COUNTY from any and all claims that may be made against COUNTY for such benefits.

**XII. CONFLICT OF INTEREST**

CONTRACTOR and CONTRACTOR's officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property or source of income which could be financially affected by or otherwise conflict in any manner or degree with the performance of services required under this Agreement.

**XIII. USE OF FUNDS**

It is understood and agreed that no funds provided by COUNTY pursuant to this Agreement shall be used by CONTRACTOR for any political activity or political contribution.

**XIV. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES**

- A. CONTRACTOR agrees and assures COUNTY that CONTRACTOR and any subcontractors shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of COUNTY, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of COUNTY employees and agents, and recipients of services are free from such discrimination and harassment.
- B. CONTRACTOR represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code §§ 12900 et seq.), and regulations and guidelines issued pursuant thereto.
- C. CONTRACTOR agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable antidiscrimination laws and this provision.

- D. CONTRACTOR shall include this nondiscrimination provision in all subcontracts related to this Agreement.

**XV. INDEMNIFICATION**

For work or services provided under this Agreement, which are not professional services, CONTRACTOR shall indemnify, defend, and hold harmless COUNTY, its Board of Supervisors, officers, directors, agents, employees and volunteers from and against any and all claims, demands, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from performance of this Agreement, regardless of whether caused in part by a party indemnified hereunder, except for loss caused by the sole negligence of COUNTY, its Board of Supervisors, officers, directors, agents, employees and volunteers.

For professional services provided under this Agreement, CONTRACTOR shall indemnify, defend, and hold harmless COUNTY, its Board of Supervisors, officers, directors, agents, employees and volunteers from and against any and all claims, demands, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the negligent performance of the professional services provided under this Agreement.

**XVI. INSURANCE**

CONTRACTOR, at its sole cost and expense, shall carry insurance - or self-insure - its activities in connection with this Agreement, and obtain, keep in force and maintain, insurance or equivalent programs of self-insurance, for general liability, workers compensation, property, professional liability, and business automobile liability adequate to cover its potential liabilities hereunder. CONTRACTOR agrees to provide the other thirty (30) days' advance written notice of any cancellation, termination or lapse of any of the insurance or self-insurance coverages.

**XVII. INFORMATION TECHNOLOGY ASSURANCES**

CONTRACTOR shall take all reasonable precautions to ensure that any hardware, software, and/or embedded chip devices used by CONTRACTOR in the performance of services under this Agreement, other than those owned or provided by COUNTY, shall be free from viruses. Nothing in this provision shall be construed to limit any rights or remedies otherwise available to COUNTY under this Agreement.

**XVIII. WEB ACCESSIBILITY**

CONTRACTOR shall ensure that all web sites and web applications provided by CONTRACTOR pursuant to this Agreement shall comply with COUNTY's Web Accessibility Policy adopted by the Board of Supervisors on February 18, 2003 as well as any approved amendment thereto.

**XIX. COMPENSATION AND PAYMENT OF INVOICES LIMITATIONS**

- A. Compensation under this Agreement shall be limited to the Maximum Total Payment Amount set forth in Exhibit B, or Exhibit B as modified by COUNTY in accordance with express provisions in this Agreement.

- B. CONTRACTOR shall submit an invoice on the forms and in accordance with the procedures prescribed by COUNTY on a monthly basis. Invoices shall be submitted to COUNTY no later than the fifteenth (15th) day of the month following the invoice period, and COUNTY shall pay CONTRACTOR within thirty (30) days after receipt of an appropriate and correct invoice. Notwithstanding the foregoing, COUNTY, in its discretion and at the request of CONTRACTOR, may, in writing, permit CONTRACTOR to provide a single invoice for the total contract amount.
- C. COUNTY operates on a July through June fiscal year. Invoices for services provided in any fiscal year must be submitted no later than July 31, one month after the end of the fiscal year. Invoices submitted after July 31 for the prior fiscal year shall not be honored by COUNTY unless CONTRACTOR has obtained prior written COUNTY approval to the contrary.
- D. CONTRACTOR shall maintain for four years following termination of this agreement full and complete documentation of all services and expenditures associated with performing the services covered under this Agreement. Expense documentation shall include: time sheets or payroll records for each employee; receipts for supplies; applicable subcontract expenditures; applicable overhead and indirect expenditures.
- E. In the event CONTRACTOR fails to comply with any provisions of this Agreement, COUNTY may withhold payment until such non-compliance has been corrected.

**XX. LEGAL TRAINING INFORMATION**

If under this Agreement CONTRACTOR is to provide training of County personnel on legal issues, then CONTRACTOR shall submit all training and program material for prior review and written approval by County Counsel. Only those materials approved by County Counsel shall be utilized.

**XXI. SUBCONTRACTS, ASSIGNMENT**

- A. CONTRACTOR shall obtain prior written approval from COUNTY before subcontracting any of the services delivered under this Agreement. CONTRACTOR remains legally responsible for the performance of all contract terms including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. CONTRACTOR shall be held responsible by COUNTY for the performance of any subcontractor whether approved by COUNTY or not.
- B. This Agreement is not assignable by CONTRACTOR in whole or in part, without the prior written consent of COUNTY.

**XXII. AMENDMENT AND WAIVER**

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder.

No interpretation of any provision of this Agreement shall be binding upon COUNTY unless agreed in writing by DIRECTOR and counsel for COUNTY.

### **XXIII. SUCCESSORS**

This Agreement shall bind the successors of COUNTY and CONTRACTOR in the same manner as if they were expressly named.

### **XXIV. TIME**

Time is of the essence of this Agreement.

### **XXV. INTERPRETATION**

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

### **XXVI. DIRECTOR**

As used in this Agreement, "DIRECTOR" shall mean the Chief Operations Officer, or his/her designee.

### **XXVII. DISPUTES**

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. If the dispute cannot be resolved by mutual agreement, nothing herein shall preclude either party's right to pursue remedy or relief by civil litigation, pursuant to the laws of the State of California.

### **XXVIII. TERMINATION**

- A. COUNTY may terminate this Agreement without cause upon thirty (30) days written notice to the other party. Notice shall be deemed served on the date of mailing. If notice of termination for cause is given by COUNTY to CONTRACTOR and it is later determined that CONTRACTOR was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to this paragraph (A).
- B. COUNTY may terminate this Agreement for cause immediately upon giving written notice to CONTRACTOR should CONTRACTOR materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified. In the event of such termination, COUNTY may proceed with the work in any manner deemed proper by COUNTY. If notice of termination for cause is given by COUNTY to CONTRACTOR and it is later determined that CONTRACTOR was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph (A) above.

- C. COUNTY may terminate or amend this Agreement immediately upon giving written notice to CONTRACTOR, 1) if advised that funds are not available from external sources for this Agreement or any portion thereof; 2) if funds in COUNTY's yearly proposed and/or final budget are not appropriated by COUNTY for this Agreement or any portion thereof; or 3) if funds that were previously appropriated for this Agreement are reduced, eliminated, and/or re-allocated by COUNTY as a result of mid-year budget reductions.
- D. If this Agreement is terminated under paragraph A or C above, CONTRACTOR shall only be paid for any services completed and provided prior to notice of termination. In the event of termination under paragraph A or C above, CONTRACTOR shall be paid an amount which bears the same ratio to the total compensation authorized by the Agreement as the services actually performed bear to the total services of CONTRACTOR covered by this Agreement, less payments of compensation previously made. In no event, however, shall COUNTY pay CONTRACTOR an amount which exceeds a pro rata portion of the Agreement total based on the portion of the Agreement term that has elapsed on the effective date of the termination.
- E. CONTRACTOR shall not incur any expenses under this Agreement after notice of termination and shall cancel any outstanding expenses obligations to a third party that CONTRACTOR can legally cancel.

#### **XXIX.REPORTS**

CONTRACTOR shall, without additional compensation therefore, make fiscal, program evaluation, progress, and such other reports as may be reasonably required by DIRECTOR concerning CONTRACTOR's activities as they affect the contract duties and purposes herein. COUNTY shall explain procedures for reporting the required information.

#### **XXX.AUDITS AND RECORDS**

Upon COUNTY's request, COUNTY or its designee shall have the right at reasonable times and intervals to audit, at CONTRACTOR's premises, CONTRACTOR's financial and program records as COUNTY deems necessary to determine CONTRACTOR's compliance with legal and contractual requirements and the correctness of claims submitted by CONTRACTOR. CONTRACTOR shall maintain such records for a period of four years following termination of the Agreement, and shall make them available for copying upon COUNTY's request at COUNTY's expense. COUNTY shall have the right to withhold any payment under this agreement until CONTRACTOR has provided access to CONTRACTOR'S financial and program records related to this Agreement.

#### **XXXI.PRIOR AGREEMENTS**

This Agreement constitutes the entire contract between COUNTY and CONTRACTOR regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between COUNTY and CONTRACTOR regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.



**EXHIBIT A to Agreement  
between the COUNTY OF SACRAMENTO,  
hereinafter referred to as "COUNTY," and  
CITY OF SACRAMENTO/  
CENTER FOR SACRAMENTO HISTORY,  
hereinafter referred to as "CONTRACTOR"**

Organization: City of Sacramento/Center for Sacramento History

Total Grant: \$145,350

**Project Scope of Work**

The Center for Sacramento History (previously the Archives & Museum Collection Center) will receive funding for activities in 2011-2012 County Fiscal Year.

The Center for Sacramento History's mission as a public agency is to illuminate and promote the exploration and analysis of the social, political, geographic, and cultural history of the City and County of Sacramento.

The contribution provided by the county will support staff costs and utilities for maintaining climate control for two facilities (551 Sequoia Pacific and McClellan Park). A staff of two full-time archivists, provide access to the collections and work on the cataloging of county records.

The joint operations agreement provides savings to the County for the storage and access to their public records. The highest demand for researcher access is to our county records. Over 45% of the records pulled by staff are for county records, with the highest demand being for county recorder records, Board of Supervisor records, and court records including civil and probate records. The Center for Sacramento (CSH) provides county residents and visiting scholars public access to county records (as required by the State's Public Records Act) at a cost far below any private archival storage facility.

**EXHIBIT B to Agreement  
between the COUNTY OF SACRAMENTO,  
hereinafter referred to as "COUNTY," and  
CITY OF SACRAMENTO/  
CENTER FOR SACRAMENTO HISTORY,  
hereinafter referred to as "CONTRACTOR"**

**COMPENSATION**

**I. MAXIMUM PAYMENT TO CONTRACTOR**

The Maximum Total Payment Amount under this Agreement is:

One Hundred Forty-Five Thousand Three Hundred Fifty Dollars (\$145,350)

| Compensation Summary |                  |
|----------------------|------------------|
| <b>Total</b>         | <b>\$145,350</b> |

CONTRACTOR CERTIFICATION OF COMPLIANCE FORM  
EXHIBIT C

WHEREAS it is in the best interest of Sacramento County that those entities with whom the County does business, or proposes to do business, demonstrate financial responsibility, integrity and lawfulness, it is inequitable for those entities with whom the County does business to receive County funds while failing to pay court-ordered child, family and spousal support which shifts the support of their dependents onto the public treasury. Therefore, in order to assist the Sacramento County Department of Child Support Services in its efforts to collect unpaid court-ordered child, family and spousal support orders, the following certification must be provided by all entities that do business or desire to do business with the county.

1) CONTRACTOR hereby certifies:

- (a) the CONTRACTOR is a government or non-profit entity (exempt),  Yes  No
- (b) the CONTRACTOR has no Principal Owners (25% or more) (exempt),  Yes  No
- (c) each Principal Owner (25% or more),  
does not have any existing child support orders,  Yes  No
- (d) CONTRACTOR'S Principal Owners are currently in substantial compliance with any court-ordered child, family and spousal support order, including orders to provide current residence address, employment information, and whether dependent health insurance coverage is available. If not in compliance, Principal Owner has become current or has arranged a payment schedule with the Department of Child Support Services or the court.  
 Yes  No

2) CONTRACTOR shall certify that each of the following statements is true:

- a. CONTRACTOR has fully complied with all applicable state and federal reporting requirements relating to employment reporting for its employees; and
- b. CONTRACTOR has fully complied with all lawfully served wage and earnings assignment orders and notices of assignment and will continue to maintain compliance.

Note: Failure to comply with state and federal reporting requirements regarding a contractor's employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment constitutes a default under the contract; and failures to cure the default within 90 days of notice by the County shall be grounds for termination of the contract.

Principal Owners can contact the Sacramento Department of Child Support Services at (916) 875-7400 or (888) 271-3906, by writing to P.O. Box 269112, Sacramento, 95826-9112, or by E-mailing: [dcssbiddercompliance@saccounty.net](mailto:dcssbiddercompliance@saccounty.net).

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CONTRACTOR  
\_\_\_\_\_  
Printed Name

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**2011-2012 Transient Occupancy Tax  
AGREEMENT**

THIS AGREEMENT is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 2011, by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and Sacramento Metropolitan Arts Commission <sup>a joint</sup> ~~powers authority~~, hereinafter referred to as "CONTRACTOR."

*City of Sacramento*

*K?*

**RECITALS**

WHEREAS, pursuant to the provisions of Subdivision K of Section 15 of the Charter of the County of Sacramento, and Section 63000 of the Government Code of the State of California, the Board of Supervisors of COUNTY is desirous to promote economic revitalization, future development, and a healthy climate for jobs in California which will depend upon a well-conceived system of public improvements, services and amenities that are essential to the economic well-being of the citizens of the state and County and are necessary to maintain, as well as create, employment within the state and County; and

WHEREAS, the services to be performed by CONTRACTOR pursuant to this contract will serve to exhibit and/or enhance the economic benefits to Sacramento County and its residents; and

WHEREAS, COUNTY AND CONTRACTOR desire to enter into this Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, COUNTY and CONTRACTOR agree as follows:

**I. SCOPE OF SERVICES**

CONTRACTOR shall provide services in the amount, type and manner described in Exhibit A, which is attached hereto and incorporated herein.

**II. TERM**

This Agreement shall be effective and commence as of the date first written above and shall end on June 30, 2012.

**III. NOTICE**

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

**TO COUNTY**

County Executive Office  
Attn: Troy Givans  
700 H Street, Suite 7650  
Sacramento, CA 95814-1280

**TO CONTRACTOR**

City of Sacramento/Sacramento  
Metropolitan Arts Commission  
1030 15<sup>th</sup> Street, Suite 250  
Sacramento, CA 95814-4025

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

**IV. COMPLIANCE WITH LAWS**

CONTRACTOR shall observe and comply with all applicable Federal, State, and County laws, regulations and ordinances.

**V. GOVERNING LAWS AND JURISDICTION**

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

**VI. LICENSES AND PERMITS**

- A. CONTRACTOR shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Sacramento and all other appropriate governmental agencies, including any certification and credentials required by COUNTY. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by COUNTY.
- B. CONTRACTOR further certifies to COUNTY that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, State or county government contracts. Contractor certifies that it shall not contract with a Subcontractor that is so debarred or suspended.

**VII. PERFORMANCE STANDARDS**

CONTRACTOR shall perform its services under this Agreement in accordance with the industry and/or professional standards applicable to CONTRACTOR'S services.

**VIII. OWNERSHIP OF WORK PRODUCT**

All technical data, evaluations, plans, specifications, reports, documents, or other work products developed by CONTRACTOR hereunder shall be the exclusive property of COUNTY and shall be delivered to COUNTY upon completion of the services authorized hereunder. CONTRACTOR may retain copies thereof for its files and internal use. Publication of the information directly derived from work performed or data obtained in connection with services rendered under this Agreement must first be approved in writing by COUNTY. COUNTY recognizes that all technical data,

evaluations, plans, specifications, reports, and other work products are instruments of CONTRACTOR's services and are not designed for use other than what is intended by this Agreement.

**IX. STATUS OF CONTRACTOR**

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is independent and that no relationship of employer-employee exists between the parties hereto. CONTRACTOR's assigned personnel shall not be entitled to any benefits payable to employees of COUNTY. COUNTY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this agreement, and as an independent contractor, CONTRACTOR hereby indemnifies and holds COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by any third party that an employer-employee relationship exists by reason of this agreement.
- B. It is further understood and agreed by the parties hereto that CONTRACTOR in the performance of its obligation hereunder is subject to the control or direction of COUNTY as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by CONTRACTOR for accomplishing the results.
- C. If, in the performance of this agreement, any third persons are employed by CONTRACTOR, such person shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR, and the COUNTY shall have no right or authority over such persons or the terms of such employment.
- D. It is further understood and agreed that as an independent contractor and not an employee of COUNTY, neither the CONTRACTOR nor CONTRACTOR's assigned personnel shall have any entitlement as a County employee, right to act on behalf of COUNTY in any capacity whatsoever as agent, nor to bind COUNTY to any obligation whatsoever. CONTRACTOR shall not be covered by worker's compensation; nor shall CONTRACTOR be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the COUNTY to employees of the COUNTY.
- E. It is further understood and agreed that CONTRACTOR must issue W-2 and 941 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel under the terms and conditions of this agreement.

**X. CONTRACTOR IDENTIFICATION**

CONTRACTOR shall provide the COUNTY with the following information for the purpose of compliance with California Unemployment Insurance Code section 1088.8 and Sacramento County Code Chapter 2.160: CONTRACTOR's name, address, telephone number, social security number, and whether dependent health insurance coverage is available to CONTRACTOR.

**XI. BENEFITS WAIVER**

If CONTRACTOR is unincorporated, CONTRACTOR acknowledges and agrees that CONTRACTOR is not entitled to receive the following benefits and/or compensation from COUNTY: medical, dental, vision and retirement benefits, life and disability insurance, sick leave, bereavement leave, jury duty leave, parental leave, or any other similar benefits or compensation otherwise provided to permanent civil service employees pursuant to the County Charter, the County Code, the Civil Service Rule, the Sacramento County Employees' Retirement System and/or any and all memoranda of understanding between COUNTY and its employee organizations. Should CONTRACTOR or any employee or agent of CONTRACTOR seek to obtain such benefits from COUNTY, CONTRACTOR agrees to indemnify and hold harmless COUNTY from any and all claims that may be made against COUNTY for such benefits.

**XII. CONFLICT OF INTEREST**

CONTRACTOR and CONTRACTOR's officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property or source of income which could be financially affected by or otherwise conflict in any manner or degree with the performance of services required under this Agreement.

**XIII. USE OF FUNDS**

It is understood and agreed that no funds provided by COUNTY pursuant to this Agreement shall be used by CONTRACTOR for any political activity or political contribution.

**XIV. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES**

- A. CONTRACTOR agrees and assures COUNTY that CONTRACTOR and any subcontractors shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of COUNTY, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of COUNTY employees and agents, and recipients of services are free from such discrimination and harassment.
- B. CONTRACTOR represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code §§ 12900 et seq.), and regulations and guidelines issued pursuant thereto.
- C. CONTRACTOR agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable antidiscrimination laws and this provision.

- D. CONTRACTOR shall include this nondiscrimination provision in all subcontracts related to this Agreement.

**XV. INDEMNIFICATION**

For work or services provided under this Agreement, which are not professional services, CONTRACTOR shall indemnify, defend, and hold harmless COUNTY, its Board of Supervisors, officers, directors, agents, employees and volunteers from and against any and all claims, demands, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from performance of this Agreement, regardless of whether caused in part by a party indemnified hereunder, except for loss caused by the sole negligence of COUNTY, its Board of Supervisors, officers, directors, agents, employees and volunteers.

For professional services provided under this Agreement, CONTRACTOR shall indemnify, defend, and hold harmless COUNTY, its Board of Supervisors, officers, directors, agents, employees and volunteers from and against any and all claims, demands, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the negligent performance of the professional services provided under this Agreement.

**XVI. INSURANCE**

CONTRACTOR, at its sole cost and expense, shall carry insurance - or self-insure - its activities in connection with this Agreement, and obtain, keep in force and maintain, insurance or equivalent programs of self-insurance, for general liability, workers compensation, property, professional liability, and business automobile liability adequate to cover its potential liabilities hereunder. CONTRACTOR agrees to provide the other thirty (30) days' advance written notice of any cancellation, termination or lapse of any of the insurance or self-insurance coverages.

**XVII. INFORMATION TECHNOLOGY ASSURANCES**

CONTRACTOR shall take all reasonable precautions to ensure that any hardware, software, and/or embedded chip devices used by CONTRACTOR in the performance of services under this Agreement, other than those owned or provided by COUNTY, shall be free from viruses. Nothing in this provision shall be construed to limit any rights or remedies otherwise available to COUNTY under this Agreement.

**XVIII. WEB ACCESSIBILITY**

CONTRACTOR shall ensure that all web sites and web applications provided by CONTRACTOR pursuant to this Agreement shall comply with COUNTY's Web Accessibility Policy adopted by the Board of Supervisors on February 18, 2003 as well as any approved amendment thereto.

**XIX. COMPENSATION AND PAYMENT OF INVOICES LIMITATIONS**

- A. Compensation under this Agreement shall be limited to the Maximum Total Payment Amount set forth in Exhibit B, or Exhibit B as modified by COUNTY in accordance with express provisions in this Agreement.

- B. CONTRACTOR shall submit an invoice on the forms and in accordance with the procedures prescribed by COUNTY on a monthly basis. Invoices shall be submitted to COUNTY no later than the fifteenth (15th) day of the month following the invoice period, and COUNTY shall pay CONTRACTOR within thirty (30) days after receipt of an appropriate and correct invoice. Notwithstanding the foregoing, COUNTY, in its discretion and at the request of CONTRACTOR, may, in writing, permit CONTRACTOR to provide a single invoice for the total contract amount.
- C. COUNTY operates on a July through June fiscal year. Invoices for services provided in any fiscal year must be submitted no later than July 31, one month after the end of the fiscal year. Invoices submitted after July 31 for the prior fiscal year shall not be honored by COUNTY unless CONTRACTOR has obtained prior written COUNTY approval to the contrary.
- D. CONTRACTOR shall maintain for four years following termination of this agreement full and complete documentation of all services and expenditures associated with performing the services covered under this Agreement. Expense documentation shall include: time sheets or payroll records for each employee; receipts for supplies; applicable subcontract expenditures; applicable overhead and indirect expenditures.
- E. In the event CONTRACTOR fails to comply with any provisions of this Agreement, COUNTY may withhold payment until such non-compliance has been corrected.

## **XX. LEGAL TRAINING INFORMATION**

If under this Agreement CONTRACTOR is to provide training of County personnel on legal issues, then CONTRACTOR shall submit all training and program material for prior review and written approval by County Counsel. Only those materials approved by County Counsel shall be utilized.

## **XXI. SUBCONTRACTS, ASSIGNMENT**

- A. CONTRACTOR shall obtain prior written approval from COUNTY before subcontracting any of the services delivered under this Agreement. CONTRACTOR remains legally responsible for the performance of all contract terms including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. CONTRACTOR shall be held responsible by COUNTY for the performance of any subcontractor whether approved by COUNTY or not.
- B. This Agreement is not assignable by CONTRACTOR in whole or in part, without the prior written consent of COUNTY.

## **XXII. AMENDMENT AND WAIVER**

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder.

No interpretation of any provision of this Agreement shall be binding upon COUNTY unless agreed in writing by DIRECTOR and counsel for COUNTY.

### **XXIII. SUCCESSORS**

This Agreement shall bind the successors of COUNTY and CONTRACTOR in the same manner as if they were expressly named.

### **XXIV. TIME**

Time is of the essence of this Agreement.

### **XXV. INTERPRETATION**

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

### **XXVI. DIRECTOR**

As used in this Agreement, "DIRECTOR" shall mean the Chief Operations Officer, or his/her designee.

### **XXVII. DISPUTES**

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. If the dispute cannot be resolved by mutual agreement, nothing herein shall preclude either party's right to pursue remedy or relief by civil litigation, pursuant to the laws of the State of California.

### **XXVIII. TERMINATION**

- A. COUNTY may terminate this Agreement without cause upon thirty (30) days written notice to the other party. Notice shall be deemed served on the date of mailing. If notice of termination for cause is given by COUNTY to CONTRACTOR and it is later determined that CONTRACTOR was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to this paragraph (A).
- B. COUNTY may terminate this Agreement for cause immediately upon giving written notice to CONTRACTOR should CONTRACTOR materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified. In the event of such termination, COUNTY may proceed with the work in any manner deemed proper by COUNTY. If notice of termination for cause is given by COUNTY to CONTRACTOR and it is later determined that CONTRACTOR was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph (A) above.

- C. COUNTY may terminate or amend this Agreement immediately upon giving written notice to CONTRACTOR, 1) if advised that funds are not available from external sources for this Agreement or any portion thereof; 2) if funds in COUNTY's yearly proposed and/or final budget are not appropriated by COUNTY for this Agreement or any portion thereof; or 3) if funds that were previously appropriated for this Agreement are reduced, eliminated, and/or re-allocated by COUNTY as a result of mid-year budget reductions.
- D. If this Agreement is terminated under paragraph A or C above, CONTRACTOR shall only be paid for any services completed and provided prior to notice of termination. In the event of termination under paragraph A or C above, CONTRACTOR shall be paid an amount which bears the same ratio to the total compensation authorized by the Agreement as the services actually performed bear to the total services of CONTRACTOR covered by this Agreement, less payments of compensation previously made. In no event, however, shall COUNTY pay CONTRACTOR an amount which exceeds a pro rata portion of the Agreement total based on the portion of the Agreement term that has elapsed on the effective date of the termination.
- E. CONTRACTOR shall not incur any expenses under this Agreement after notice of termination and shall cancel any outstanding expenses obligations to a third party that CONTRACTOR can legally cancel.

#### **XXIX. REPORTS**

CONTRACTOR shall, without additional compensation therefore, make fiscal, program evaluation, progress, and such other reports as may be reasonably required by DIRECTOR concerning CONTRACTOR's activities as they affect the contract duties and purposes herein. COUNTY shall explain procedures for reporting the required information.

#### **XXX. AUDITS AND RECORDS**

Upon COUNTY's request, COUNTY or its designee shall have the right at reasonable times and intervals to audit, at CONTRACTOR's premises, CONTRACTOR's financial and program records as COUNTY deems necessary to determine CONTRACTOR's compliance with legal and contractual requirements and the correctness of claims submitted by CONTRACTOR. CONTRACTOR shall maintain such records for a period of four years following termination of the Agreement, and shall make them available for copying upon COUNTY's request at COUNTY's expense. COUNTY shall have the right to withhold any payment under this agreement until CONTRACTOR has provided access to CONTRACTOR'S financial and program records related to this Agreement.

#### **XXXI. PRIOR AGREEMENTS**

This Agreement constitutes the entire contract between COUNTY and CONTRACTOR regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between COUNTY and CONTRACTOR regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

**XXXII. SEVERABILITY**

If any term or condition of this Agreement or the application thereof to any person(s) or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this agreement are declared severable.

**XXXIII. FORCE MAJEURE**

Neither CONTRACTOR nor COUNTY shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

**XXXIV. SURVIVAL OF TERMS**

All services performed and deliverables provided pursuant to this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions, and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

**XXXV. DUPLICATE COUNTERPARTS**

This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

**COUNTY OF SACRAMENTO,**  
a political subdivision of the  
State of California

**CITY OF SACRAMENTO/SACRAMENTO  
METROPOLITAN ARTS COMMISSION,**  
~~a joint powers authority~~ *KP*

By: \_\_\_\_\_  
Navdeep S. Gill,  
Chief Operations Officer

By: \_\_\_\_\_  
Contractor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

*Kevin C. ...*

**Dep. CITY ATTORNEY**

**EXHIBIT A to Agreement  
between the COUNTY OF SACRAMENTO,  
hereinafter referred to as "COUNTY," and  
CITY OF SACRAMENTO/SACRAMENTO  
METROPOLITAN ARTS COMMISSION,  
hereinafter referred to as "CONTRACTOR"**

**Organization:** City of Sacramento/Sacramento Metropolitan Arts Commission

**Total Grant:** \$150,000

**Project Scope of Work**

The City of Sacramento/Sacramento Metropolitan Arts Commission (SMAC) will receive funding for activities in 2011-2012 County Fiscal Year.

SMAC is to advance the community through arts and culture by actively fostering, developing and advocating support of the arts within Sacramento City and County. SMAC is a valuable resource and community hub, helping to create a vital arts scene that advances the quality of life in the region for residents and visitors alike, as well as contributing to a growing economy.

The contribution provided by the County will support administrative staff who manages the Cultural Arts Award's programs.

SMAC is dedicated to the principles of inclusion, accessibility and diversity. All programs are implemented through open, accountable and transparent public processes.

- Art in Public Places — Making Everyday Places into Extraordinary Spaces.
- Grants and Cultural Programs — Supporting the Artists and Arts Groups Who Enrich Our Region.
- Arts Education — Cultivating Creativity in People of All Ages.
- Arts Marketing and Cultural Tourism — Making Sacramento a Dynamic Cultural Destination.

**SMAC values**

- the power of the arts to touch the mind and soul, individually and collectively.
- the wealth in our community of artistic talent and commitment to continually strive for artistic excellence through exploration and advancement;
- the arts as a vital force for advancing economic opportunities and Sacramento's livability quotient;
- outreach to the widest and most diverse citizenry, including residents, cultural travelers, arts novices and veterans, and arts participants of all ages, neighborhoods, ethnicities and cultures;
- the vibrancy of a strong City-County partnership;
- a supportive and empowering environment and resource for artists and arts organizations;
- the tenets of inclusion, access, integrity, accountability, and equity in all aspects of our agency's programs and operations; and
- the significance of our role as a local arts agency in the fiber of our community.

**EXHIBIT B to Agreement  
between the COUNTY OF SACRAMENTO,  
hereinafter referred to as "COUNTY," and  
CITY OF SACRAMENTO/SACRAMENTO  
METROPOLITAN ARTS COMMISSION,  
hereinafter referred to as "CONTRACTOR"**

**COMPENSATION**

**I. MAXIMUM PAYMENT TO CONTRACTOR**

The Maximum Total Payment Amount under this Agreement is:

One Hundred Fifty Thousand Dollars (\$150,000)

| Compensation Summary |                  |
|----------------------|------------------|
| <b>Total</b>         | <b>\$150,000</b> |

**CONTRACTOR CERTIFICATION OF COMPLIANCE FORM  
EXHIBIT C**

WHEREAS it is in the best interest of Sacramento County that those entities with whom the County does business, or proposes to do business, demonstrate financial responsibility, integrity and lawfulness, it is inequitable for those entities with whom the County does business to receive County funds while failing to pay court-ordered child, family and spousal support which shifts the support of their dependents onto the public treasury. Therefore, in order to assist the Sacramento County Department of Child Support Services in its efforts to collect unpaid court-ordered child, family and spousal support orders, the following certification must be provided by all entities that do business or desire to do business with the county.

1) CONTRACTOR hereby certifies:

- (a) the CONTRACTOR is a government or non-profit entity (exempt),  Yes  No
- (b) the CONTRACTOR has no Principal Owners (25% or more) (exempt),  Yes  No
- (c) each Principal Owner (25% or more),  
does not have any existing child support orders,  Yes  No
- (d) CONTRACTOR'S Principal Owners are currently in substantial compliance with any court-ordered child, family and spousal support order, including orders to provide current residence address, employment information, and whether dependent health insurance coverage is available. If not in compliance, Principal Owner has become current or has arranged a payment schedule with the Department of Child Support Services or the court.  Yes  No

2) CONTRACTOR shall certify that each of the following statements is true:

- a. CONTRACTOR has fully complied with all applicable state and federal reporting requirements relating to employment reporting for its employees; and
- b. CONTRACTOR has fully complied with all lawfully served wage and earnings assignment orders and notices of assignment and will continue to maintain compliance.

Note: Failure to comply with state and federal reporting requirements regarding a contractor's employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment constitutes a default under the contract; and failures to cure the default within 90 days of notice by the County shall be grounds for termination of the contract.

Principal Owners can contact the Sacramento Department of Child Support Services at (916) 875-7400 or (888) 271-3906, by writing to P.O. Box 269112, Sacramento, 95826-9112, or by E-mailing [dcssbiddercompliance@saccounty.net](mailto:dcssbiddercompliance@saccounty.net).

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CONTRACTOR

\_\_\_\_\_  
Printed Name

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**2011-2012 Transient Occupancy Tax  
AGREEMENT**

THIS AGREEMENT is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_ 2011, by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and City of Sacramento/Sacramento History Museum, ~~a joint powers authority~~; hereinafter referred to as "CONTRACTOR."

KP

**RECITALS**

WHEREAS, pursuant to the provisions of Subdivision K of Section 15 of the Charter of the County of Sacramento, and Section 63000 of the Government Code of the State of California, the Board of Supervisors of COUNTY is desirous to promote economic revitalization, future development, and a healthy climate for jobs in California which will depend upon a well-conceived system of public improvements, services and amenities that are essential to the economic well-being of the citizens of the state and County and are necessary to maintain, as well as create, employment within the state and County; and

WHEREAS, the services to be performed by CONTRACTOR pursuant to this contract will serve to exhibit and/or enhance the economic benefits to Sacramento County and its residents; and

WHEREAS, COUNTY AND CONTRACTOR desire to enter into this Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, COUNTY and CONTRACTOR agree as follows:

**I. SCOPE OF SERVICES**

CONTRACTOR shall provide services in the amount, type and manner described in Exhibit A, which is attached hereto and incorporated herein.

**II. TERM**

This Agreement shall be effective and commence as of the date first written above and shall end on June 30, 2012.

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**TO COUNTY**

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**TO CONTRACTOR**

City of Sacramento/  
Sacramento History Museum  
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Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

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- A. CONTRACTOR shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Sacramento and all other appropriate governmental agencies, including any certification and credentials required by COUNTY. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by COUNTY.
- B. CONTRACTOR further certifies to COUNTY that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, State or county government contracts. Contractor certifies that it shall not contract with a Subcontractor that is so debarred or suspended.

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**VIII. OWNERSHIP OF WORK PRODUCT**

All technical data, evaluations, plans, specifications, reports, documents, or other work products developed by CONTRACTOR hereunder shall be the exclusive property of COUNTY and shall be delivered to COUNTY upon completion of the services authorized hereunder. CONTRACTOR may retain copies thereof for its files and internal use. Publication of the information directly derived from work performed or data obtained in connection with services rendered under this Agreement must first be

approved in writing by COUNTY. COUNTY recognizes that all technical data, evaluations, plans, specifications, reports, and other work products are instruments of CONTRACTOR's services and are not designed for use other than what is intended by this Agreement.

#### **IX. STATUS OF CONTRACTOR**

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is independent and that no relationship of employer-employee exists between the parties hereto. CONTRACTOR's assigned personnel shall not be entitled to any benefits payable to employees of COUNTY. COUNTY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this agreement; and as an independent contractor, CONTRACTOR hereby indemnifies and holds COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by any third party that an employer-employee relationship exists by reason of this agreement.
- B. It is further understood and agreed by the parties hereto that CONTRACTOR in the performance of its obligation hereunder is subject to the control or direction of COUNTY as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by CONTRACTOR for accomplishing the results.
- C. If, in the performance of this agreement, any third persons are employed by CONTRACTOR, such person shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR, and the COUNTY shall have no right or authority over such persons or the terms of such employment.
- D. It is further understood and agreed that as an independent contractor and not an employee of COUNTY, neither the CONTRACTOR nor CONTRACTOR's assigned personnel shall have any entitlement as a County employee, right to act on behalf of COUNTY in any capacity whatsoever as agent, nor to bind COUNTY to any obligation whatsoever. CONTRACTOR shall not be covered by worker's compensation; nor shall CONTRACTOR be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the COUNTY to employees of the COUNTY.
- E. It is further understood and agreed that CONTRACTOR must issue W-2 and 941 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel under the terms and conditions of this agreement.

#### **X. CONTRACTOR IDENTIFICATION**

CONTRACTOR shall provide the COUNTY with the following information for the purpose of compliance with California Unemployment Insurance Code section 1088.8 and Sacramento County Code Chapter 2.160: CONTRACTOR's name, address, telephone number, social security number, and whether dependent health insurance coverage is available to CONTRACTOR.

**XI. BENEFITS WAIVER**

If CONTRACTOR is unincorporated, CONTRACTOR acknowledges and agrees that CONTRACTOR is not entitled to receive the following benefits and/or compensation from COUNTY: medical, dental, vision and retirement benefits, life and disability insurance, sick leave, bereavement leave, jury duty leave, parental leave, or any other similar benefits or compensation otherwise provided to permanent civil service employees pursuant to the County Charter, the County Code, the Civil Service Rule, the Sacramento County Employees' Retirement System and/or any and all memoranda of understanding between COUNTY and its employee organizations. Should CONTRACTOR or any employee or agent of CONTRACTOR seek to obtain such benefits from COUNTY, CONTRACTOR agrees to indemnify and hold harmless COUNTY from any and all claims that may be made against COUNTY for such benefits.

**XII. CONFLICT OF INTEREST**

CONTRACTOR and CONTRACTOR's officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property or source of income which could be financially affected by or otherwise conflict in any manner or degree with the performance of services required under this Agreement.

**XIII. USE OF FUNDS**

It is understood and agreed that no funds provided by COUNTY pursuant to this Agreement shall be used by CONTRACTOR for any political activity or political contribution.

**XIV. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES**

- A. CONTRACTOR agrees and assures COUNTY that CONTRACTOR and any subcontractors shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of COUNTY, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of COUNTY employees and agents, and recipients of services are free from such discrimination and harassment.
- B. CONTRACTOR represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code §§ 12900 et seq.), and regulations and guidelines issued pursuant thereto.
- C. CONTRACTOR agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable antidiscrimination laws and this provision.

- D. CONTRACTOR shall include this nondiscrimination provision in all subcontracts related to this Agreement.

**XV. INDEMNIFICATION**

For work or services provided under this Agreement, which are not professional services, CONTRACTOR shall indemnify, defend, and hold harmless COUNTY, its Board of Supervisors, officers, directors, agents, employees and volunteers from and against any and all claims, demands, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from performance of this Agreement, regardless of whether caused in part by a party indemnified hereunder, except for loss caused by the sole negligence of COUNTY, its Board of Supervisors, officers, directors, agents, employees and volunteers.

For professional services provided under this Agreement, CONTRACTOR shall indemnify, defend, and hold harmless COUNTY, its Board of Supervisors, officers, directors, agents, employees and volunteers from and against any and all claims, demands, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the negligent performance of the professional services provided under this Agreement.

**XVI. INSURANCE**

CONTRACTOR, at its sole cost and expense, shall carry insurance - or self-insure - its activities in connection with this Agreement, and obtain, keep in force and maintain, insurance or equivalent programs of self-insurance, for general liability, workers compensation, property, professional liability, and business automobile liability adequate to cover its potential liabilities hereunder. CONTRACTOR agrees to provide the other thirty (30) days' advance written notice of any cancellation, termination or lapse of any of the insurance or self-insurance coverages.

**XVII. INFORMATION TECHNOLOGY ASSURANCES**

CONTRACTOR shall take all reasonable precautions to ensure that any hardware, software, and/or embedded chip devices used by CONTRACTOR in the performance of services under this Agreement, other than those owned or provided by COUNTY, shall be free from viruses. Nothing in this provision shall be construed to limit any rights or remedies otherwise available to COUNTY under this Agreement.

**XVIII. WEB ACCESSIBILITY**

CONTRACTOR shall ensure that all web sites and web applications provided by CONTRACTOR pursuant to this Agreement shall comply with COUNTY's Web Accessibility Policy adopted by the Board of Supervisors on February 18, 2003 as well as any approved amendment thereto.

**XIX. COMPENSATION AND PAYMENT OF INVOICES LIMITATIONS**

- A. Compensation under this Agreement shall be limited to the Maximum Total Payment Amount set forth in Exhibit B, or Exhibit B as modified by COUNTY in accordance with express provisions in this Agreement.

- B. CONTRACTOR shall submit an invoice on the forms and in accordance with the procedures prescribed by COUNTY on a monthly basis. Invoices shall be submitted to COUNTY no later than the fifteenth (15th) day of the month following the invoice period, and COUNTY shall pay CONTRACTOR within thirty (30) days after receipt of an appropriate and correct invoice. Notwithstanding the foregoing, COUNTY, in its discretion and at the request of CONTRACTOR, may, in writing, permit CONTRACTOR to provide a single invoice for the total contract amount.
- C. COUNTY operates on a July through June fiscal year. Invoices for services provided in any fiscal year must be submitted no later than July 31, one month after the end of the fiscal year. Invoices submitted after July 31 for the prior fiscal year shall not be honored by COUNTY unless CONTRACTOR has obtained prior written COUNTY approval to the contrary.
- D. CONTRACTOR shall maintain for four years following termination of this agreement full and complete documentation of all services and expenditures associated with performing the services covered under this Agreement. Expense documentation shall include: time sheets or payroll records for each employee; receipts for supplies; applicable subcontract expenditures; applicable overhead and indirect expenditures.
- E. In the event CONTRACTOR fails to comply with any provisions of this Agreement, COUNTY may withhold payment until such non-compliance has been corrected.

**XX. LEGAL TRAINING INFORMATION**

If under this Agreement CONTRACTOR is to provide training of County personnel on legal issues, then CONTRACTOR shall submit all training and program material for prior review and written approval by County Counsel. Only those materials approved by County Counsel shall be utilized.

**XXI. SUBCONTRACTS, ASSIGNMENT**

- A. CONTRACTOR shall obtain prior written approval from COUNTY before subcontracting any of the services delivered under this Agreement. CONTRACTOR remains legally responsible for the performance of all contract terms including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. CONTRACTOR shall be held responsible by COUNTY for the performance of any subcontractor whether approved by COUNTY or not.
- B. This Agreement is not assignable by CONTRACTOR in whole or in part, without the prior written consent of COUNTY.

**XXII. AMENDMENT AND WAIVER**

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder.

No interpretation of any provision of this Agreement shall be binding upon COUNTY unless agreed in writing by DIRECTOR and counsel for COUNTY.

### **XXIII. SUCCESSORS**

This Agreement shall bind the successors of COUNTY and CONTRACTOR in the same manner as if they were expressly named.

### **XXIV. TIME**

Time is of the essence of this Agreement.

### **XXV. INTERPRETATION**

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

### **XXVI. DIRECTOR**

As used in this Agreement, "DIRECTOR" shall mean the Chief Operations Officer, or his/her designee.

### **XXVII. DISPUTES**

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. If the dispute cannot be resolved by mutual agreement, nothing herein shall preclude either party's right to pursue remedy or relief by civil litigation, pursuant to the laws of the State of California.

### **XXVIII. TERMINATION**

- A. COUNTY may terminate this Agreement without cause upon thirty (30) days written notice to the other party. Notice shall be deemed served on the date of mailing. If notice of termination for cause is given by COUNTY to CONTRACTOR and it is later determined that CONTRACTOR was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to this paragraph (A).
- B. COUNTY may terminate this Agreement for cause immediately upon giving written notice to CONTRACTOR should CONTRACTOR materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified. In the event of such termination, COUNTY may proceed with the work in any manner deemed proper by COUNTY. If notice of termination for cause is given by COUNTY to CONTRACTOR and it is later determined that CONTRACTOR was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph (A) above.
- C. COUNTY may terminate or amend this Agreement immediately upon giving written notice to CONTRACTOR, 1) if advised that funds are not available from external sources

for this Agreement or any portion thereof; 2) if funds in COUNTY's yearly proposed and/or final budget are not appropriated by COUNTY for this Agreement or any portion thereof; or 3) if funds that were previously appropriated for this Agreement are reduced, eliminated, and/or re-allocated by COUNTY as a result of mid-year budget reductions.

- D. If this Agreement is terminated under paragraph A or C above, CONTRACTOR shall only be paid for any services completed and provided prior to notice of termination. In the event of termination under paragraph A or C above, CONTRACTOR shall be paid an amount which bears the same ratio to the total compensation authorized by the Agreement as the services actually performed bear to the total services of CONTRACTOR covered by this Agreement, less payments of compensation previously made. In no event, however, shall COUNTY pay CONTRACTOR an amount which exceeds a pro rata portion of the Agreement total based on the portion of the Agreement term that has elapsed on the effective date of the termination.
- E. CONTRACTOR shall not incur any expenses under this Agreement after notice of termination and shall cancel any outstanding expenses obligations to a third party that CONTRACTOR can legally cancel.

#### **XXIX.REPORTS**

CONTRACTOR shall, without additional compensation therefore, make fiscal, program evaluation, progress, and such other reports as may be reasonably required by DIRECTOR concerning CONTRACTOR's activities as they affect the contract duties and purposes herein. COUNTY shall explain procedures for reporting the required information.

#### **XXX.AUDITS AND RECORDS**

Upon COUNTY's request, COUNTY or its designee shall have the right at reasonable times and intervals to audit, at CONTRACTOR's premises, CONTRACTOR's financial and program records as COUNTY deems necessary to determine CONTRACTOR's compliance with legal and contractual requirements and the correctness of claims submitted by CONTRACTOR. CONTRACTOR shall maintain such records for a period of four years following termination of the Agreement, and shall make them available for copying upon COUNTY's request at COUNTY's expense. COUNTY shall have the right to withhold any payment under this agreement until CONTRACTOR has provided access to CONTRACTOR'S financial and program records related to this Agreement.

#### **XXXI.PRIOR AGREEMENTS**

This Agreement constitutes the entire contract between COUNTY and CONTRACTOR regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between COUNTY and CONTRACTOR regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

#### **XXXII.SEVERABILITY**

If any term or condition of this Agreement or the application thereof to any person(s) or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall

not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this agreement are declared severable.

**XXXIII. FORCE MAJEURE**

Neither CONTRACTOR nor COUNTY shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

**XXXIV. SURVIVAL OF TERMS**

All services performed and deliverables provided pursuant to this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions, and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

**XXXV. DUPLICATE COUNTERPARTS**

This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

**COUNTY OF SACRAMENTO,  
a political subdivision of the  
State of California**

**CITY OF SACRAMENTO/  
SACRAMENTO HISTORY MUSEUM,  
~~a joint powers authority~~ KP**

By: \_\_\_\_\_  
Navdeep S. Gill,  
Chief Operations Officer

By: \_\_\_\_\_  
Contractor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

*Kenneth C. Brudley*  
\_\_\_\_\_  
Def. CITY ATTORNEY

**EXHIBIT A to Agreement  
between the COUNTY OF SACRAMENTO,  
hereinafter referred to as "COUNTY," and  
CITY OF SACRAMENTO/  
SACRAMENTO HISTORY MUSEUM,  
hereinafter referred to as "CONTRACTOR"**

**Organization:** City of Sacramento/Sacramento History Museum

**Total Grant:** \$93,204.50

**Project Scope of Work**

The Sacramento History Museum will receive funding for activities in 2011-2012 County Fiscal Year.

The mission of the Sacramento History Museum is to engage the Sacramento region and its visitors to explore the area's rich and diverse past. Through creative educational programs and interpretive exhibitions, visitors will gain a deeper understanding of a usable past and how it informs an integral part of the present.

The contribution provided by the county will help the museum keep its doors open and operating. The funds cover half of the cost of a very small staff of four full time people and six part time staff members.

Beginning in 2010 the museum and the Historic Old Sacramento Foundation launched underground tours to Old Sacramento. This program has been very successful drawing people locally and across the state and county to the Sacramento region. The underground tours enhance the historic offerings for the region and increase its value as a destination.

The museum staff also served as the key coordinators for Gold Rush days this last year. These historical attractions supported by this small staff make a large contribution in making Sacramento a travel destination.

**Summer Programs**

In June 2009 the museum launched its summer street scene programs in Old Sacramento and these programs were expanded for 2010 and 2011. Over the summer months tourists and locals have the opportunity to engage with authentic 19<sup>th</sup> century performers and artisans. These programs increased visitation to the district and helped provide historical interpretation for the area.

**Outreach to Schools**

The museum also continues its outreach to schools throughout the county. Museum staff members continue to make site visits to schools, and this spring we are currently fully booked with school groups across the county coming to the museum to learn more about the Gold Rush era.

With staff and mission re-orientation the museum has been able to increase the amount of tours available to school groups. This benefits the county because we are able to provide services to schools throughout the county at a level that did not exist before. With an emphasis by schools

to look for closer field trips, the museum provides a unique resource in the county to cover the history of entire region. The goal is to increase this program by adding more educators to the staff to allow for greater outreach in classrooms.

**EXHIBIT B to Agreement  
between the COUNTY OF SACRAMENTO,  
hereinafter referred to as "COUNTY," and  
CITY OF SACRAMENTO/  
SACRAMENTO HISTORY MUSEUM,  
hereinafter referred to as "CONTRACTOR"**

**COMPENSATION**

**I. MAXIMUM PAYMENT TO CONTRACTOR**

The Maximum Total Payment Amount under this Agreement is:

Ninety-Three Thousand Two Hundred Four Dollars And Fifty Cents (\$93,204.50)

| Compensation Summary |             |
|----------------------|-------------|
| Total                | \$93,204.50 |

**CONTRACTOR CERTIFICATION OF COMPLIANCE FORM  
EXHIBIT C**

WHEREAS it is in the best interest of Sacramento County that those entities with whom the County does business, or proposes to do business, demonstrate financial responsibility, integrity and lawfulness, it is inequitable for those entities with whom the County does business to receive County funds while failing to pay court-ordered child, family and spousal support which shifts the support of their dependents onto the public treasury. Therefore, in order to assist the Sacramento County Department of Child Support Services in its efforts to collect unpaid court-ordered child, family and spousal support orders, the following certification must be provided by all entities that do business or desire to do business with the county.

1) CONTRACTOR hereby certifies:

- (a) the CONTRACTOR is a government or non-profit entity (exempt),  Yes  No
- (b) the CONTRACTOR has no Principal Owners (25% or more) (exempt),  Yes  No
- (c) each Principal Owner (25% or more),  
does not have any existing child support orders,  Yes  No
- (d) CONTRACTOR'S Principal Owners are currently in substantial compliance with any court-ordered child, family and spousal support order, including orders to provide current residence address, employment information, and whether dependent health insurance coverage is available. If not in compliance, Principal Owner has become current or has arranged a payment schedule with the Department of Child Support Services or the court.  Yes  No

2) CONTRACTOR shall certify that each of the following statements is true:

- a. CONTRACTOR has fully complied with all applicable state and federal reporting requirements relating to employment reporting for its employees; and
- b. CONTRACTOR has fully complied with all lawfully served wage and earnings assignment orders and notices of assignment and will continue to maintain compliance.

Note: Failure to comply with state and federal reporting requirements regarding a contractor's employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment constitutes a default under the contract; and failures to cure the default within 90 days of notice by the County shall be grounds for termination of the contract.

Principal Owners can contact the Sacramento Department of Child Support Services at (916) 875-7400 or (888) 271-3906, by writing to P.O. Box 269112, Sacramento, 95826-9112, or by E-mailing [dcssbiddercompliance@saccounty.net](mailto:dcssbiddercompliance@saccounty.net).

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CONTRACTOR  
\_\_\_\_\_  
Printed Name

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**2011-2012 Transient Occupancy Tax  
AGREEMENT**

THIS AGREEMENT is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_ 2011, by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and City of Sacramento/Powerhouse Science Center, a joint powers authority, hereinafter referred to as "CONTRACTOR."

KP

**RECITALS**

WHEREAS, pursuant to the provisions of Subdivision K of Section 15 of the Charter of the County of Sacramento, and Section 63000 of the Government Code of the State of California, the Board of Supervisors of COUNTY is desirous to promote economic revitalization, future development, and a healthy climate for jobs in California which will depend upon a well-conceived system of public improvements, services and amenities that are essential to the economic well-being of the citizens of the state and County and are necessary to maintain, as well as create, employment within the state and County; and

WHEREAS, the services to be performed by CONTRACTOR pursuant to this contract will serve to exhibit and/or enhance the economic benefits to Sacramento County and its residents; and

WHEREAS, COUNTY AND CONTRACTOR desire to enter into this Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, COUNTY and CONTRACTOR agree as follows:

**I. SCOPE OF SERVICES**

CONTRACTOR shall provide services in the amount, type and manner described in Exhibit A, which is attached hereto and incorporated herein.

**II. TERM**

This Agreement shall be effective and commence as of the date first written above and shall end on June 30, 2012.

**III. NOTICE**

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

**TO COUNTY**

County Executive Office  
Attn: Troy Givans  
700 H Street, Suite 7650  
Sacramento, CA 95814-1280

**TO CONTRACTOR**

City of Sacramento/  
Powerhouse Science Center  
1030 15<sup>th</sup> Street, Suite 250  
Sacramento, CA 95814-4025

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

**IV. COMPLIANCE WITH LAWS**

CONTRACTOR shall observe and comply with all applicable Federal, State, and County laws, regulations and ordinances.

**V. GOVERNING LAWS AND JURISDICTION**

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

**VI. LICENSES AND PERMITS**

- A. CONTRACTOR shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Sacramento and all other appropriate governmental agencies, including any certification and credentials required by COUNTY. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by COUNTY.
- B. CONTRACTOR further certifies to COUNTY that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, State or county government contracts. Contractor certifies that it shall not contract with a Subcontractor that is so debarred or suspended.

**VII. PERFORMANCE STANDARDS**

CONTRACTOR shall perform its services under this Agreement in accordance with the industry and/or professional standards applicable to CONTRACTOR'S services.

**VIII. OWNERSHIP OF WORK PRODUCT**

All technical data, evaluations, plans, specifications, reports, documents, or other work products developed by CONTRACTOR hereunder shall be the exclusive property of COUNTY and shall be delivered to COUNTY upon completion of the services authorized hereunder. CONTRACTOR may retain copies thereof for its files and internal use. Publication of the information directly derived from work performed or data obtained in connection with services rendered under this Agreement must first be approved in writing by COUNTY. COUNTY recognizes that all technical data,

evaluations, plans, specifications, reports, and other work products are instruments of CONTRACTOR's services and are not designed for use other than what is intended by this Agreement.

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- B. It is further understood and agreed by the parties hereto that CONTRACTOR in the performance of its obligation hereunder is subject to the control or direction of COUNTY as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by CONTRACTOR for accomplishing the results.
- C. If, in the performance of this agreement, any third persons are employed by CONTRACTOR, such person shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR, and the COUNTY shall have no right or authority over such persons or the terms of such employment.
- D. It is further understood and agreed that as an independent contractor and not an employee of COUNTY, neither the CONTRACTOR nor CONTRACTOR's assigned personnel shall have any entitlement as a County employee, right to act on behalf of COUNTY in any capacity whatsoever as agent, nor to bind COUNTY to any obligation whatsoever. CONTRACTOR shall not be covered by worker's compensation; nor shall CONTRACTOR be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the COUNTY to employees of the COUNTY.
- E. It is further understood and agreed that CONTRACTOR must issue W-2 and 941 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel under the terms and conditions of this agreement.

**X. CONTRACTOR IDENTIFICATION**

CONTRACTOR shall provide the COUNTY with the following information for the purpose of compliance with California Unemployment Insurance Code section 1088.8 and Sacramento County Code Chapter 2.160: CONTRACTOR's name, address, telephone number, social security number, and whether dependent health insurance coverage is available to CONTRACTOR.

**XI. BENEFITS WAIVER**

If CONTRACTOR is unincorporated, CONTRACTOR acknowledges and agrees that CONTRACTOR is not entitled to receive the following benefits and/or compensation from COUNTY: medical, dental, vision and retirement benefits, life and disability insurance, sick leave, bereavement leave, jury duty leave, parental leave, or any other similar benefits or compensation otherwise provided to permanent civil service employees pursuant to the County Charter, the County Code, the Civil Service Rule, the Sacramento County Employees' Retirement System and/or any and all memoranda of understanding between COUNTY and its employee organizations. Should CONTRACTOR or any employee or agent of CONTRACTOR seek to obtain such benefits from COUNTY, CONTRACTOR agrees to indemnify and hold harmless COUNTY from any and all claims that may be made against COUNTY for such benefits.

**XII. CONFLICT OF INTEREST**

CONTRACTOR and CONTRACTOR's officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property or source of income which could be financially affected by or otherwise conflict in any manner or degree with the performance of services required under this Agreement.

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It is understood and agreed that no funds provided by COUNTY pursuant to this Agreement shall be used by CONTRACTOR for any political activity or political contribution.

**XIV. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES**

- A. CONTRACTOR agrees and assures COUNTY that CONTRACTOR and any subcontractors shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of COUNTY, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of COUNTY employees and agents, and recipients of services are free from such discrimination and harassment.
- B. CONTRACTOR represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code §§ 12900 et seq.), and regulations and guidelines issued pursuant thereto.
- C. CONTRACTOR agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable antidiscrimination laws and this provision.

- D. **CONTRACTOR** shall include this nondiscrimination provision in all subcontracts related to this Agreement.

**XV. INDEMNIFICATION**

For work or services provided under this Agreement, which are not professional services, **CONTRACTOR** shall indemnify, defend, and hold harmless **COUNTY**, its Board of Supervisors, officers, directors, agents, employees and volunteers from and against any and all claims, demands, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from performance of this Agreement, regardless of whether caused in part by a party indemnified hereunder, except for loss caused by the sole negligence of **COUNTY**, its Board of Supervisors, officers, directors, agents, employees and volunteers.

For professional services provided under this Agreement, **CONTRACTOR** shall indemnify, defend, and hold harmless **COUNTY**, its Board of Supervisors, officers, directors, agents, employees and volunteers from and against any and all claims, demands, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the negligent performance of the professional services provided under this Agreement.

**XVI. INSURANCE**

**CONTRACTOR**, at its sole cost and expense, shall carry insurance - or self-insure - its activities in connection with this Agreement, and obtain, keep in force and maintain, insurance or equivalent programs of self-insurance, for general liability, workers compensation, property, professional liability, and business automobile liability adequate to cover its potential liabilities hereunder. **CONTRACTOR** agrees to provide the other thirty (30) days' advance written notice of any cancellation, termination or lapse of any of the insurance or self-insurance coverages.

**XVII. INFORMATION TECHNOLOGY ASSURANCES**

**CONTRACTOR** shall take all reasonable precautions to ensure that any hardware, software, and/or embedded chip devices used by **CONTRACTOR** in the performance of services under this Agreement, other than those owned or provided by **COUNTY**, shall be free from viruses. Nothing in this provision shall be construed to limit any rights or remedies otherwise available to **COUNTY** under this Agreement.

**XVIII. WEB ACCESSIBILITY**

**CONTRACTOR** shall ensure that all web sites and web applications provided by **CONTRACTOR** pursuant to this Agreement shall comply with **COUNTY**'s Web Accessibility Policy adopted by the Board of Supervisors on February 18, 2003 as well as any approved amendment thereto.

**XIX. COMPENSATION AND PAYMENT OF INVOICES LIMITATIONS**

- A. Compensation under this Agreement shall be limited to the Maximum Total Payment Amount set forth in Exhibit B, or Exhibit B as modified by **COUNTY** in accordance with express provisions in this Agreement.

- B. CONTRACTOR shall submit an invoice on the forms and in accordance with the procedures prescribed by COUNTY on a monthly basis. Invoices shall be submitted to COUNTY no later than the fifteenth (15th) day of the month following the invoice period, and COUNTY shall pay CONTRACTOR within thirty (30) days after receipt of an appropriate and correct invoice. Notwithstanding the foregoing, COUNTY, in its discretion and at the request of CONTRACTOR, may, in writing, permit CONTRACTOR to provide a single invoice for the total contract amount.
- C. COUNTY operates on a July through June fiscal year. Invoices for services provided in any fiscal year must be submitted no later than July 31, one month after the end of the fiscal year. Invoices submitted after July 31 for the prior fiscal year shall not be honored by COUNTY unless CONTRACTOR has obtained prior written COUNTY approval to the contrary.
- D. CONTRACTOR shall maintain for four years following termination of this agreement full and complete documentation of all services and expenditures associated with performing the services covered under this Agreement. Expense documentation shall include: time sheets or payroll records for each employee; receipts for supplies; applicable subcontract expenditures; applicable overhead and indirect expenditures.
- E. In the event CONTRACTOR fails to comply with any provisions of this Agreement, COUNTY may withhold payment until such non-compliance has been corrected.

**XX. LEGAL TRAINING INFORMATION**

If under this Agreement CONTRACTOR is to provide training of County personnel on legal issues, then CONTRACTOR shall submit all training and program material for prior review and written approval by County Counsel. Only those materials approved by County Counsel shall be utilized.

**XXI. SUBCONTRACTS, ASSIGNMENT**

- A. CONTRACTOR shall obtain prior written approval from COUNTY before subcontracting any of the services delivered under this Agreement. CONTRACTOR remains legally responsible for the performance of all contract terms including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. CONTRACTOR shall be held responsible by COUNTY for the performance of any subcontractor whether approved by COUNTY or not.
- B. This Agreement is not assignable by CONTRACTOR in whole or in part, without the prior written consent of COUNTY.

**XXII. AMENDMENT AND WAIVER**

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder.

No interpretation of any provision of this Agreement shall be binding upon COUNTY unless agreed in writing by DIRECTOR and counsel for COUNTY.

### **XXIII. SUCCESSORS**

This Agreement shall bind the successors of COUNTY and CONTRACTOR in the same manner as if they were expressly named.

### **XXIV. TIME**

Time is of the essence of this Agreement.

### **XXV. INTERPRETATION**

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

### **XXVI. DIRECTOR**

As used in this Agreement, "DIRECTOR" shall mean the Chief Operations Officer, or his/her designee.

### **XXVII. DISPUTES**

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. If the dispute cannot be resolved by mutual agreement, nothing herein shall preclude either party's right to pursue remedy or relief by civil litigation, pursuant to the laws of the State of California.

### **XXVIII. TERMINATION**

- A. COUNTY may terminate this Agreement without cause upon thirty (30) days written notice to the other party. Notice shall be deemed served on the date of mailing. If notice of termination for cause is given by COUNTY to CONTRACTOR and it is later determined that CONTRACTOR was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to this paragraph (A).
- B. COUNTY may terminate this Agreement for cause immediately upon giving written notice to CONTRACTOR should CONTRACTOR materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified. In the event of such termination, COUNTY may proceed with the work in any manner deemed proper by COUNTY. If notice of termination for cause is given by COUNTY to CONTRACTOR and it is later determined that CONTRACTOR was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph (A) above.

- C. COUNTY may terminate or amend this Agreement immediately upon giving written notice to CONTRACTOR, 1) if advised that funds are not available from external sources for this Agreement or any portion thereof; 2) if funds in COUNTY's yearly proposed and/or final budget are not appropriated by COUNTY for this Agreement or any portion thereof; or 3) if funds that were previously appropriated for this Agreement are reduced, eliminated, and/or re-allocated by COUNTY as a result of mid-year budget reductions.
- D. If this Agreement is terminated under paragraph A or C above, CONTRACTOR shall only be paid for any services completed and provided prior to notice of termination. In the event of termination under paragraph A or C above, CONTRACTOR shall be paid an amount which bears the same ratio to the total compensation authorized by the Agreement as the services actually performed bear to the total services of CONTRACTOR covered by this Agreement, less payments of compensation previously made. In no event, however, shall COUNTY pay CONTRACTOR an amount which exceeds a pro rata portion of the Agreement total based on the portion of the Agreement term that has elapsed on the effective date of the termination.
- E. CONTRACTOR shall not incur any expenses under this Agreement after notice of termination and shall cancel any outstanding expenses obligations to a third party that CONTRACTOR can legally cancel.

#### **XXIX.REPORTS**

CONTRACTOR shall, without additional compensation therefore, make fiscal, program evaluation, progress, and such other reports as may be reasonably required by DIRECTOR concerning CONTRACTOR's activities as they affect the contract duties and purposes herein. COUNTY shall explain procedures for reporting the required information.

#### **XXX.AUDITS AND RECORDS**

Upon COUNTY's request, COUNTY or its designee shall have the right at reasonable times and intervals to audit, at CONTRACTOR's premises, CONTRACTOR's financial and program records as COUNTY deems necessary to determine CONTRACTOR's compliance with legal and contractual requirements and the correctness of claims submitted by CONTRACTOR. CONTRACTOR shall maintain such records for a period of four years following termination of the Agreement, and shall make them available for copying upon COUNTY's request at COUNTY's expense. COUNTY shall have the right to withhold any payment under this agreement until CONTRACTOR has provided access to CONTRACTOR'S financial and program records related to this Agreement.

#### **XXXI.PRIOR AGREEMENTS**

This Agreement constitutes the entire contract between COUNTY and CONTRACTOR regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between COUNTY and CONTRACTOR regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

**XXXII. SEVERABILITY**

If any term or condition of this Agreement or the application thereof to any person(s) or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this agreement are declared severable.

**XXXIII. FORCE MAJEURE**

Neither CONTRACTOR nor COUNTY shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

**XXXIV. SURVIVAL OF TERMS**

All services performed and deliverables provided pursuant to this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions, and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

**XXXV. DUPLICATE COUNTERPARTS**

This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

**COUNTY OF SACRAMENTO,  
a political subdivision of the  
State of California**

**CITY OF SACRAMENTO/  
POWERHOUSE SCIENCE CENTER,  
a joint powers authority KP**

By: \_\_\_\_\_  
Navdeep S. Gill,  
Chief Operations Officer

By: \_\_\_\_\_  
Contractor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

*Koumudi Koudika*  
\_\_\_\_\_  
Dep. CITY ATTORNEY

**EXHIBIT A to Agreement  
between the COUNTY OF SACRAMENTO,  
hereinafter referred to as "COUNTY," and  
CITY OF SACRAMENTO/  
POWERHOUSE SCIENCE CENTER,  
hereinafter referred to as "CONTRACTOR"**

Organization: City of Sacramento/Powerhouse Science Center

Total Grant: \$93,204.50

**Project Scope of Work**

The City of Sacramento/Powerhouse Science Center, operating as the Discovery Museum Science & Space Center will receive funding for activities in 2011-2012 County Fiscal Year.

The funds received from the County of Sacramento are for the purpose of operating and maintaining the Powerhouse Science Center (Science & Space Center).

The Science & Space Center is a family-focused educational institution dedicated to enriching the lives of local residents and visitors to the Sacramento region by encouraging the exploration of science and space.

The Science & Space Center has changing exhibits that are rotated in every two years. These exhibits include Got Trees?--an exhibit about trees and the animals that live in them; Gee Whiz Geology--an exhibit about rocks, crystals, minerals and fossils; Bone Zone--an exhibit about skulls and skeletons; and Space Quest--an exhibit about space exploration. In addition to these exhibits, the Science & Space Center has Sacramento's only public planetarium, an Animal & Nature Discovery Room, an amphitheater, wildlife pond and 14 acres of nature trails through a redwood grove and among heritage oaks.

The Science & Space Center focuses on science education for grades K-8 with emphasis on Earth, natural, physical, laboratory and space sciences. Students experience the planetarium shows; they are served onsite with tours of the four rotating exhibits and/or "dig" classes in archaeology; and they are served through outreach programs delivering 8 different programs in animal sciences, paleontology, and geology. All programs meet core content standards for California Frameworks. In addition, the Science & Space Center offers science day camps during the summer. The Center also hosted Girl Scout badge programs and Boy Scout badge programs.

The Challenger Learning Center serves 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> grades with simulated space programs. Students work together from two classrooms that have been designed to replicate NASA's Mission Control and a simulated space craft in outer space. Patterned after the mission of the NASA Space Shuttle, the Challenger Learning Center in Sacramento ranks number 1 among Challenger Centers nationwide and serves a number of students annually. Programs include Rendezvous with Comet Haley, Mission to Mars and Return to the Moon.

The Science & Space Center participates in numerous community events per year providing materials and science information to event attendees. The Science & Space Center also participates in Free Museum Day every February and hosts visitors during the one-day event.

**EXHIBIT B to Agreement  
between the COUNTY OF SACRAMENTO,  
hereinafter referred to as "COUNTY," and  
CITY OF SACRAMENTO/  
POWERHOUSE SCIENCE CENTER,  
hereinafter referred to as "CONTRACTOR"**

**COMPENSATION**

**I. MAXIMUM PAYMENT TO CONTRACTOR**

The Maximum Total Payment Amount under this Agreement is:

Ninety-Three Thousand Two Hundred Four Dollars And Fifty Cents (\$93,204.50)

| Compensation Summary |                    |
|----------------------|--------------------|
| <b>Total</b>         | <b>\$93,204.50</b> |

**CONTRACTOR CERTIFICATION OF COMPLIANCE FORM  
EXHIBIT C**

WHEREAS it is in the best interest of Sacramento County that those entities with whom the County does business, or proposes to do business, demonstrate financial responsibility, integrity and lawfulness, it is inequitable for those entities with whom the County does business to receive County funds while failing to pay court-ordered child, family and spousal support which shifts the support of their dependents onto the public treasury. Therefore, in order to assist the Sacramento County Department of Child Support Services in its efforts to collect unpaid court-ordered child, family and spousal support orders, the following certification must be provided by all entities that do business or desire to do business with the county.

1) CONTRACTOR hereby certifies:

- (a) the CONTRACTOR is a government or non-profit entity (exempt),  Yes  No
- (b) the CONTRACTOR has no Principal Owners (25% or more) (exempt),  Yes  No
- (c) each Principal Owner (25% or more),  
does not have any existing child support orders,  Yes  No
- (d) CONTRACTOR'S Principal Owners are currently in substantial compliance with any court-ordered child, family and spousal support order, including orders to provide current residence address, employment information, and whether dependent health insurance coverage is available. If not in compliance, Principal Owner has become current or has arranged a payment schedule with the Department of Child Support Services or the court.  Yes  No

2) CONTRACTOR shall certify that each of the following statements is true:

- a. CONTRACTOR has fully complied with all applicable state and federal reporting requirements relating to employment reporting for its employees; and
- b. CONTRACTOR has fully complied with all lawfully served wage and earnings assignment orders and notices of assignment and will continue to maintain compliance.

Note: Failure to comply with state and federal reporting requirements regarding a contractor's employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment constitutes a default under the contract; and failures to cure the default within 90 days of notice by the County shall be grounds for termination of the contract. Principal Owners can contact the Sacramento Department of Child Support Services at (916) 875-7400 or (888) 271-3906, by writing to P.O. Box 269112, Sacramento, 95826-9112, or by E-mailing [dcssbiddercompliance@saccounty.net](mailto:dcssbiddercompliance@saccounty.net).

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CONTRACTOR

\_\_\_\_\_  
Printed Name

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**2011-2012 Transient Occupancy Tax  
AGREEMENT**

THIS AGREEMENT is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 2011, by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and City of Sacramento/Sacramento Sports Commission, ~~a joint powers authority~~, hereinafter referred to as "CONTRACTOR."

KP

**RECITALS**

WHEREAS, pursuant to the provisions of Subdivision K of Section 15 of the Charter of the County of Sacramento, and Section 63000 of the Government Code of the State of California, the Board of Supervisors of COUNTY is desirous to promote economic revitalization, future development, and a healthy climate for jobs in California which will depend upon a well-conceived system of public improvements, services and amenities that are essential to the economic well-being of the citizens of the state and County and are necessary to maintain, as well as create, employment within the state and County; and

WHEREAS, the services to be performed by CONTRACTOR pursuant to this contract will serve to exhibit and/or enhance the economic benefits to Sacramento County and its residents; and

WHEREAS, COUNTY AND CONTRACTOR desire to enter into this Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, COUNTY and CONTRACTOR agree as follows:

**I. SCOPE OF SERVICES**

CONTRACTOR shall provide services in the amount, type and manner described in Exhibit A, which is attached hereto and incorporated herein.

**II. TERM**

This Agreement shall be effective and commence as of the date first written above and shall end on June 30, 2012.

**III. NOTICE**

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

**TO COUNTY**

County Executive Office  
Attn: Troy Givans  
700 H Street, Suite 7650  
Sacramento, CA 95814-1280

**TO CONTRACTOR**

City of Sacramento/  
Sacramento Sports Commission  
1030 15<sup>th</sup> Street, Suite 250  
Sacramento, CA 95814-4025

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

**IV. COMPLIANCE WITH LAWS**

CONTRACTOR shall observe and comply with all applicable Federal, State, and County laws, regulations and ordinances.

**V. GOVERNING LAWS AND JURISDICTION**

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

**VI. LICENSES AND PERMITS**

- A. CONTRACTOR shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Sacramento and all other appropriate governmental agencies, including any certification and credentials required by COUNTY. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by COUNTY.
- B. CONTRACTOR further certifies to COUNTY that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, State or county government contracts. Contractor certifies that it shall not contract with a Subcontractor that is so debarred or suspended.

**VII. PERFORMANCE STANDARDS**

CONTRACTOR shall perform its services under this Agreement in accordance with the industry and/or professional standards applicable to CONTRACTOR'S services.

**VIII. OWNERSHIP OF WORK PRODUCT**

All technical data, evaluations, plans, specifications, reports, documents, or other work products developed by CONTRACTOR hereunder shall be the exclusive property of COUNTY and shall be delivered to COUNTY upon completion of the services authorized hereunder. CONTRACTOR may retain copies thereof for its files and internal use. Publication of the information directly derived from work performed or data obtained in connection with services rendered under this Agreement must first be approved in writing by COUNTY. COUNTY recognizes that all technical data,

evaluations, plans, specifications, reports, and other work products are instruments of CONTRACTOR's services and are not designed for use other than what is intended by this Agreement.

**IX. STATUS OF CONTRACTOR**

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is independent and that no relationship of employer-employee exists between the parties hereto. CONTRACTOR's assigned personnel shall not be entitled to any benefits payable to employees of COUNTY. COUNTY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this agreement; and as an independent contractor, CONTRACTOR hereby indemnifies and holds COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by any third party that an employer-employee relationship exists by reason of this agreement.
- B. It is further understood and agreed by the parties hereto that CONTRACTOR in the performance of its obligation hereunder is subject to the control or direction of COUNTY as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by CONTRACTOR for accomplishing the results.
- C. If, in the performance of this agreement, any third persons are employed by CONTRACTOR, such person shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR, and the COUNTY shall have no right or authority over such persons or the terms of such employment.
- D. It is further understood and agreed that as an independent contractor and not an employee of COUNTY, neither the CONTRACTOR nor CONTRACTOR's assigned personnel shall have any entitlement as a County employee, right to act on behalf of COUNTY in any capacity whatsoever as agent, nor to bind COUNTY to any obligation whatsoever. CONTRACTOR shall not be covered by worker's compensation; nor shall CONTRACTOR be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the COUNTY to employees of the COUNTY.
- E. It is further understood and agreed that CONTRACTOR must issue W-2 and 941 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel under the terms and conditions of this agreement.

**X. CONTRACTOR IDENTIFICATION**

CONTRACTOR shall provide the COUNTY with the following information for the purpose of compliance with California Unemployment Insurance Code section 1088.8 and Sacramento County Code Chapter 2.160: CONTRACTOR's name, address, telephone number, social security number, and whether dependent health insurance coverage is available to CONTRACTOR.

**XI. BENEFITS WAIVER**

If CONTRACTOR is unincorporated, CONTRACTOR acknowledges and agrees that CONTRACTOR is not entitled to receive the following benefits and/or compensation from COUNTY: medical, dental, vision and retirement benefits, life and disability insurance, sick leave, bereavement leave, jury duty leave, parental leave, or any other similar benefits or compensation otherwise provided to permanent civil service employees pursuant to the County Charter, the County Code, the Civil Service Rule, the Sacramento County Employees' Retirement System and/or any and all memoranda of understanding between COUNTY and its employee organizations. Should CONTRACTOR or any employee or agent of CONTRACTOR seek to obtain such benefits from COUNTY, CONTRACTOR agrees to indemnify and hold harmless COUNTY from any and all claims that may be made against COUNTY for such benefits.

**XII. CONFLICT OF INTEREST**

CONTRACTOR and CONTRACTOR's officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property or source of income which could be financially affected by or otherwise conflict in any manner or degree with the performance of services required under this Agreement.

**XIII. USE OF FUNDS**

It is understood and agreed that no funds provided by COUNTY pursuant to this Agreement shall be used by CONTRACTOR for any political activity or political contribution.

**XIV. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES**

- A. CONTRACTOR agrees and assures COUNTY that CONTRACTOR and any subcontractors shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of COUNTY, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of COUNTY employees and agents, and recipients of services are free from such discrimination and harassment.
- B. CONTRACTOR represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code §§ 12900 et seq.), and regulations and guidelines issued pursuant thereto.
- C. CONTRACTOR agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable antidiscrimination laws and this provision.

- D. CONTRACTOR shall include this nondiscrimination provision in all subcontracts related to this Agreement.

**XV. INDEMNIFICATION**

For work or services provided under this Agreement, which are not professional services, CONTRACTOR shall indemnify, defend, and hold harmless COUNTY, its Board of Supervisors, officers, directors, agents, employees and volunteers from and against any and all claims, demands, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from performance of this Agreement, regardless of whether caused in part by a party indemnified hereunder, except for loss caused by the sole negligence of COUNTY, its Board of Supervisors, officers, directors, agents, employees and volunteers.

For professional services provided under this Agreement, CONTRACTOR shall indemnify, defend, and hold harmless COUNTY, its Board of Supervisors, officers, directors, agents, employees and volunteers from and against any and all claims, demands, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the negligent performance of the professional services provided under this Agreement.

**XVI. INSURANCE**

CONTRACTOR, at its sole cost and expense, shall carry insurance - or self-insure - its activities in connection with this Agreement, and obtain, keep in force and maintain, insurance or equivalent programs of self-insurance, for general liability, workers compensation, property, professional liability, and business automobile liability adequate to cover its potential liabilities hereunder. CONTRACTOR agrees to provide the other thirty (30) days' advance written notice of any cancellation, termination or lapse of any of the insurance or self-insurance coverages.

**XVII. INFORMATION TECHNOLOGY ASSURANCES**

CONTRACTOR shall take all reasonable precautions to ensure that any hardware, software, and/or embedded chip devices used by CONTRACTOR in the performance of services under this Agreement, other than those owned or provided by COUNTY, shall be free from viruses. Nothing in this provision shall be construed to limit any rights or remedies otherwise available to COUNTY under this Agreement.

**XVIII. WEB ACCESSIBILITY**

CONTRACTOR shall ensure that all web sites and web applications provided by CONTRACTOR pursuant to this Agreement shall comply with COUNTY's Web Accessibility Policy adopted by the Board of Supervisors on February 18, 2003 as well as any approved amendment thereto.

**XIX. COMPENSATION AND PAYMENT OF INVOICES LIMITATIONS**

- A. Compensation under this Agreement shall be limited to the Maximum Total Payment Amount set forth in Exhibit B, or Exhibit B as modified by COUNTY in accordance with express provisions in this Agreement.

- B. CONTRACTOR shall submit an invoice on the forms and in accordance with the procedures prescribed by COUNTY on a monthly basis. Invoices shall be submitted to COUNTY no later than the fifteenth (15th) day of the month following the invoice period, and COUNTY shall pay CONTRACTOR within thirty (30) days after receipt of an appropriate and correct invoice. Notwithstanding the foregoing, COUNTY, in its discretion and at the request of CONTRACTOR, may, in writing, permit CONTRACTOR to provide a single invoice for the total contract amount.
- C. COUNTY operates on a July through June fiscal year. Invoices for services provided in any fiscal year must be submitted no later than July 31, one month after the end of the fiscal year. Invoices submitted after July 31 for the prior fiscal year shall not be honored by COUNTY unless CONTRACTOR has obtained prior written COUNTY approval to the contrary.
- D. CONTRACTOR shall maintain for four years following termination of this agreement full and complete documentation of all services and expenditures associated with performing the services covered under this Agreement. Expense documentation shall include: time sheets or payroll records for each employee; receipts for supplies; applicable subcontract expenditures; applicable overhead and indirect expenditures.
- E. In the event CONTRACTOR fails to comply with any provisions of this Agreement, COUNTY may withhold payment until such non-compliance has been corrected.

**XX. LEGAL TRAINING INFORMATION**

If under this Agreement CONTRACTOR is to provide training of County personnel on legal issues, then CONTRACTOR shall submit all training and program material for prior review and written approval by County Counsel. Only those materials approved by County Counsel shall be utilized.

**XXI. SUBCONTRACTS, ASSIGNMENT**

- A. CONTRACTOR shall obtain prior written approval from COUNTY before subcontracting any of the services delivered under this Agreement. CONTRACTOR remains legally responsible for the performance of all contract terms including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. CONTRACTOR shall be held responsible by COUNTY for the performance of any subcontractor whether approved by COUNTY or not.
- B. This Agreement is not assignable by CONTRACTOR in whole or in part, without the prior written consent of COUNTY.

**XXII. AMENDMENT AND WAIVER**

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder.

No interpretation of any provision of this Agreement shall be binding upon COUNTY unless agreed in writing by DIRECTOR and counsel for COUNTY.

### **XXIII. SUCCESSORS**

This Agreement shall bind the successors of COUNTY and CONTRACTOR in the same manner as if they were expressly named.

### **XXIV. TIME**

Time is of the essence of this Agreement.

### **XXV. INTERPRETATION**

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

### **XXVI. DIRECTOR**

As used in this Agreement, "DIRECTOR" shall mean the Chief Operations Officer, or his/her designee.

### **XXVII. DISPUTES**

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. If the dispute cannot be resolved by mutual agreement, nothing herein shall preclude either party's right to pursue remedy or relief by civil litigation, pursuant to the laws of the State of California.

### **XXVIII. TERMINATION**

- A. COUNTY may terminate this Agreement without cause upon thirty (30) days written notice to the other party. Notice shall be deemed served on the date of mailing. If notice of termination for cause is given by COUNTY to CONTRACTOR and it is later determined that CONTRACTOR was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to this paragraph (A).
- B. COUNTY may terminate this Agreement for cause immediately upon giving written notice to CONTRACTOR should CONTRACTOR materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified. In the event of such termination, COUNTY may proceed with the work in any manner deemed proper by COUNTY. If notice of termination for cause is given by COUNTY to CONTRACTOR and it is later determined that CONTRACTOR was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph (A) above.

- C. COUNTY may terminate or amend this Agreement immediately upon giving written notice to CONTRACTOR, 1) if advised that funds are not available from external sources for this Agreement or any portion thereof; 2) if funds in COUNTY's yearly proposed and/or final budget are not appropriated by COUNTY for this Agreement or any portion thereof; or 3) if funds that were previously appropriated for this Agreement are reduced, eliminated, and/or re-allocated by COUNTY as a result of mid-year budget reductions.
- D. If this Agreement is terminated under paragraph A or C above, CONTRACTOR shall only be paid for any services completed and provided prior to notice of termination. In the event of termination under paragraph A or C above, CONTRACTOR shall be paid an amount which bears the same ratio to the total compensation authorized by the Agreement as the services actually performed bear to the total services of CONTRACTOR covered by this Agreement, less payments of compensation previously made. In no event, however, shall COUNTY pay CONTRACTOR an amount which exceeds a pro rata portion of the Agreement total based on the portion of the Agreement term that has elapsed on the effective date of the termination.
- E. CONTRACTOR shall not incur any expenses under this Agreement after notice of termination and shall cancel any outstanding expenses obligations to a third party that CONTRACTOR can legally cancel.

#### **XXIX.REPORTS**

CONTRACTOR shall, without additional compensation therefore, make fiscal, program evaluation, progress, and such other reports as may be reasonably required by DIRECTOR concerning CONTRACTOR's activities as they affect the contract duties and purposes herein. COUNTY shall explain procedures for reporting the required information.

#### **XXX.AUDITS AND RECORDS**

Upon COUNTY's request, COUNTY or its designee shall have the right at reasonable times and intervals to audit, at CONTRACTOR's premises, CONTRACTOR's financial and program records as COUNTY deems necessary to determine CONTRACTOR's compliance with legal and contractual requirements and the correctness of claims submitted by CONTRACTOR. CONTRACTOR shall maintain such records for a period of four years following termination of the Agreement, and shall make them available for copying upon COUNTY's request at COUNTY's expense. COUNTY shall have the right to withhold any payment under this agreement until CONTRACTOR has provided access to CONTRACTOR'S financial and program records related to this Agreement.

#### **XXXI.PRIOR AGREEMENTS**

This Agreement constitutes the entire contract between COUNTY and CONTRACTOR regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between COUNTY and CONTRACTOR regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

**XXXII. SEVERABILITY**

If any term or condition of this Agreement or the application thereof to any person(s) or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this agreement are declared severable.

**XXXIII. FORCE MAJEURE**

Neither CONTRACTOR nor COUNTY shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts or war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

**XXXIV. SURVIVAL OF TERMS**

All services performed and deliverables provided pursuant to this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions, and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

**XXXV. DUPLICATE COUNTERPARTS**

This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

**COUNTY OF SACRAMENTO,  
a political subdivision of the  
State of California**

**CITY OF SACRAMENTO/  
SACRAMENTO SPORTS COMMISSION,  
~~a joint powers authority~~ KP**

By: \_\_\_\_\_  
Navdeep S. Gill,  
Chief Operations Officer

By: \_\_\_\_\_  
Contractor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

*[Signature]*  
\_\_\_\_\_  
Dep. CITY ATTORNEY

**EXHIBIT A to Agreement  
between the COUNTY OF SACRAMENTO,  
hereinafter referred to as "COUNTY," and  
CITY OF SACRAMENTO/  
SACRAMENTO SPORTS COMMISSION,  
hereinafter referred to as "CONTRACTOR"**

Organization: City of Sacramento/Sacramento Sports Commission

Total Grant: \$100,000

**Project Scope of Work**

The Sacramento Sports Commission (SSC) will receive funding for activities in the 2011-2012 County Fiscal Year.

The SSCs mission is to attract high profile sporting events to Sacramento -- both to enrich the region's cultural offerings and to promote the community's economic vitality. In this regard, the SSC has enjoyed considerable success, attracting numerous national events including two Olympic Track & Field Trials, four NCAA Basketball Regional Tournaments, four NCAA Track & Field Championships, the U.S. Gymnastics National Championships, the NCAA Women's Volleyball Championship finals, the national Intercollegiate Rowing Association Championships, Amgen Tour of California and this year's World Masters Athletics Championships. The SSC's non-profit Sacramento Region Sports Education Foundation (SRSEF) was the local entity to attract and stage all five Amgen Tour of California's races.

The County grant will support the SSCs organizational development. It will be used to attract future events, prepare bids and presentations to organizations considering coming to Sacramento.

In addition to providing high profile national and international recognition for Sacramento, SSC and SRSEF have contributed to an increased quality of life for Sacramento residents by providing over 3000 volunteers the opportunity to work behind the scenes in helping with running these events. Additionally, nearly one million fans have attended these sporting events. An Economic Impact study suggests that the SSC and SRSEF have generated millions of dollars in economic impact since 1999.

**EXHIBIT B to Agreement  
between the COUNTY OF SACRAMENTO,  
hereinafter referred to as "COUNTY," and  
CITY OF SACRAMENTO/  
SACRAMENTO SPORTS COMMISSION,  
hereinafter referred to as "CONTRACTOR"**

**COMPENSATION**

**I. MAXIMUM PAYMENT TO CONTRACTOR**

The Maximum Total Payment Amount under this Agreement is:

One Hundred Thousand Dollars (\$100,000)

| Compensation Summary |           |
|----------------------|-----------|
| Total                | \$100,000 |

**CONTRACTOR CERTIFICATION OF COMPLIANCE FORM  
EXHIBIT C**

WHEREAS it is in the best interest of Sacramento County that those entities with whom the County does business, or proposes to do business, demonstrate financial responsibility, integrity and lawfulness, it is inequitable for those entities with whom the County does business to receive County funds while failing to pay court-ordered child, family and spousal support which shifts the support of their dependents onto the public treasury. Therefore, in order to assist the Sacramento County Department of Child Support Services in its efforts to collect unpaid court-ordered child, family and spousal support orders, the following certification must be provided by all entities that do business or desire to do business with the county.

1) CONTRACTOR hereby certifies:

- (a) the CONTRACTOR is a government or non-profit entity (exempt),  Yes  No
- (b) the CONTRACTOR has no Principal Owners (25% or more) (exempt),  Yes  No
- (c) each Principal Owner (25% or more),  
does not have any existing child support orders,  Yes  No
- (d) CONTRACTOR'S Principal Owners are currently in substantial compliance with any court-ordered child, family and spousal support order, including orders to provide current residence address, employment information, and whether dependent health insurance coverage is available. If not in compliance, Principal Owner has become current or has arranged a payment schedule with the Department of Child Support Services or the court.  Yes  No

2) CONTRACTOR shall certify that each of the following statements is true:

- a. CONTRACTOR has fully complied with all applicable state and federal reporting requirements relating to employment reporting for its employees; and
- b. CONTRACTOR has fully complied with all lawfully served wage and earnings assignment orders and notices of assignment and will continue to maintain compliance.

Note: Failure to comply with state and federal reporting requirements regarding a contractor's employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment constitutes a default under the contract; and failures to cure the default within 90 days of notice by the County shall be grounds for termination of the contract.

Principal Owners can contact the Sacramento Department of Child Support Services at (916) 875-7400 or (888) 271-3906, by writing to P.O. Box 269112, Sacramento, 95826-9112, or by E-mailing [dcssbiddercompliance@saccounty.net](mailto:dcssbiddercompliance@saccounty.net).

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CONTRACTOR

\_\_\_\_\_  
Printed Name